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Paper No. 11

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DIRECTOR OFFICE
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In re Application of: Kang et al.)	
Application No. 09/217,932)	
Attorney Docket No. P55501)	DECISION ON PETITION
Filed: December 22, 1998)	UNDER 37 C.F.R. §1.144 TO
For: DIGITAL CONTENT ENCRYPTION)	WITHDRAW HOLDING OF
APPARATUS AND METHOD)	RESTRICTION REQUIREMENT
THEREOF)	

This is a decision on the petition, filed December 31, 2002, under 37 CFR §1.144 requesting the withdrawal of the holding of Restriction requirement final of the above-identified application, as an election with traversal arguments have been made and represented for reconsideration.

The petition is **DISMISSED**.

This application was held with a FINAL restriction requirement in a non-final Office action of mail date December 12, 2002 (Paper No. 9), in response to Applicants filed an Election with traverse on October 22, 2002 (Paper No. 8). Sequentially, a petition was filed on December 31, 2002 (Paper No. 10).

37 C.F.R. §1.144 - Petition from requirement for restriction, with emphasis added, states:

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A **petition will not be considered if** reconsideration of the requirement was **not requested** (see §1.181).

A review of the application file record reveals that:

(1) The petition is DISMISSED because, in the instant application, it is improperly petitionable under 37 C.F.R. §1.181(c), as a request for reconsideration of a repeated action by the examiner has yet to be filed. Accordingly, this petition (Paper No. 10) is being treated as a Request for reconsideration under 37 C.F.R. §1.181(c).

(2) It is noticed that the examiner should have provided an expanded reason to support his conclusion on grouping of claimed inventions, as they are related as subcombinations disclosed as usable together in a single combination, and their patentable distinct from each other if they are shown to be separately usable, as set out by M.P.E.P. §806.05(d).

Accordingly, the application file is being forwarded to the Examiner to (1) WITHDRAWN the Final restriction requirement, (2) consider the Request for reconsideration (Paper No. 10), as noted above, and (3) provide a new non-final Office action that includes a full detailed reason to support his conclusion on restriction requirement, at least, as set out by M.P.E.P. §§803 and 806.05(d).

If the petitioner desires further review of this Decision, applicant should consider filing a Request for Reconsideration must be filed within TWO MONTHS of the mailing date of this Decision.



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